U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: FEB 12 2014 Office: NEBRASKA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as an "alien of extraordinary ability" in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director found that the petitioner had not established that the beneficiary is "an individual of extraordinary ability."

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the beneficiary's basic eligibility requirements.

On appeal, counsel submits a brief and additional evidence. Regarding the additional evidence submitted which references the movie *Brave*, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Therefore, any evidence submitted, including awards and articles, dated after June 1, 2012, the date of the original filing, is not probative to the beneficiary's eligibility. In addition, the evidence the petitioner submitted on appeal which does not contain a date (other than the date it was printed from the internet) has no probative value as the date is not apparent from the evidence. The additional letters, however, will be considered in this decision. For the reasons discussed below, upon review of the entire record, the petitioner has not established the beneficiary's eligibility for the exclusive classification sought.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

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[1] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence on behalf of the beneficiary under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria[2]

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

USCIS may not utilize substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *See Kazarian,* 596 F.3d at 1221, *citing Love Korean Church v. Chertoff,* 549 F.3d 749, 758 (9th Cir.2008). The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt" of prizes or awards. On appeal, counsel states that such a "narrow interpretation of the law is not applicable to the animation industry. Rather, it is standard in the animation film industry that major awards…are officially bestowed upon the animation film itself, or the film's production company." An inability to meet a criterion is not necessarily evidence that the criterion does not apply to the beneficiary's occupation such that a petitioner may rely on comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). Moreover, the petitioner has not established that working on an award winning film is comparable to personally receiving a lesser nationally or internationally recognized prize or award for excellence as a named recipient.

The petitioner submitted numerous letters from members of the which generally state that it is usually the production company and/or the director who are awarded prizes in the best animated film fields and that "it is recognized throughout the Academy that while directors and production companies represent and are the face of the winning film, the award for Best Animated Feature Film is bestowed as a direct result of the artistic work of individual artist(s)." The beneficiary's work on award winning films is not the same as the beneficiary's receipt of the award, as required by the plain language of the regulation. Furthermore, contrary to counsel's assertion that such awards are "not applicable to the animation industry," none of the letters state that there are not awards that are applicable to the beneficiary's field of animation. In fact, the producers awarded the award for Best Animated Character for to four individuals other than the beneficiary (a lead animator for the film); specifically, the animation supervisor, two other lead animators and the head of rigging. Thus, it is these individuals, some of whom are animators like the beneficiary, who received the award.

[2] The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt." The letters in the record acknowledge that the beneficiary was not the named recipient of the claimed awards.

Furthermore, the petitioner did not submit primary evidence of the beneficiary's receipt of any of the claimed awards, which would consist of the award certificates or trophies the awarding officials issued to the beneficiary as the named recipient. The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Regardless, the petitioner did not submit secondary evidence of the beneficiary's receipt of any awards, such as media accounts of his receipt of awards. Rather, the petitioner submitted letters which generally assert that the beneficiary was responsible in some part for the awards, but did not submit any documentary evidence demonstrating that primary evidence and secondary evidence do not exist or cannot be obtained. Regardless, the letters that have been provided are not affidavits as they were not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary 58 (9th Ed., West 2009).* Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The director determined that the petitioner established the petitioner submitted qualifying evidence under this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought." A review of the record of proceeding does not reflect that the petitioner submitted sufficient documentary evidence establishing that the beneficiary meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

In general, in order for published material to meet this criterion, it must be about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international

distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[3] Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation."

The submission of evidence that simply mentions the beneficiary's name, quotes the beneficiary, or is not otherwise about the beneficiary is not published material about the alien relating to his work in the field. An article that is not about the beneficiary does not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

Material that only lists, briefly mentions, or indicates the beneficiary's name, such as the beneficiary's film biography posted on the internet, or discusses the movies the beneficiary worked on, without even mentioning the beneficiary's name does not constitute published material about the beneficiary. In fact, other than the beneficiary's online film credits, the beneficiary's name only appears in two items: a brief online article by a journalist with the posted on an entertainment website and a listing as one of the animators for the movie in a blog post. Online directories of film credits pooled from screen credits, users, and/or members of the film and television industry do not constitute published material about the beneficiary. The record contains no evidence that the carried the article or that the entertainment website is a professional or major trade publication or other major media. The record also lacks evidence that the blog qualifies as major media, as required by the plain language of the regulations. The AAO notes that at least one letter quotes an article purportedly published in but the record does not contain a copy of the article, nor is it listed on any of the exhibit lists. According to his resume, the beneficiary attended . The petitioner has not documented that qualifies as major media.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. 2003). Any documented contributions must rise to the level of original artistic-related contributions "of major significance in the field." Recognition of the beneficiary's contributions does not necessarily demonstrate that those contributions are of major significance in the field. Instead, recognition simply reflects that the

[3] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the but in a section that is distributed only in for instance, cannot serve to spread an individual's reputation outside of that county.

beneficiary's contributions have been acknowledged by others as original, but does not reflect that they are of major significance in the field.

The petitioner asserts that the beneficiary has contributed to the field of animation while working as an animator for a film directed and films that and the petitioner helped animate or produced. The petitioner submitted several letters from individuals associated with these films and companies. A contribution of major significance in the field of animation is one that is influential beyond the studio where the animator works.

, an animation director with the petitioner, asserts that the beneficiary "developed" an animation style termed psychorealism used in the movie the director of the movie credits the beneficiary with showing "outstanding technical skill and creative artistry through the development of the film's pioneering style of psychorealism." in his capacity as a Member of the states that the beneficiary "developed the extraordinary animation style of psychorealism" and that "[a]nimators for high profile film projects…leveraged [the beneficiary's] novel animation style."[4] However, according to the submitted article " it was who was responsible for psychorealism. The article states that personally "handled about half of the facial animation; the animation grads finished the rest." Notably, quotes an article in which the petitioner did not submit, as indicating that the beneficiary refined his animation technique and artistry, but begins the quote after the beneficiary's name and uses brackets around "his," implying it is substituted for another word. On appeal, Director of the petitioner's animation studios, and Senior Vice President of Production at the petitioner's animation studios, reference an additional article at commenting on the use of psychorealism in acknowledges that the article does not name the beneficiary.

Furthermore, although many of the letters claim that other animators and movies, such as , have drawn upon the beneficiary's "groundbreaking design elements" from both and other movies, the record does not contain any support for these claims. For example, the petitioner did not submit letters from animators who worked on confirming their use of the beneficiary's techniques or articles that reference the beneficiary's influence in other films. While Head of Film and Executive Producer at , asserts that animator utilized the beneficiary's techniques in *Alice in Wonderland*, the record does not contain a letter from As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. While the beneficiary's references think highly of him, the letters fail to establish that any of his contributions are of major significance in the field, as required by the plain language of the regulation.

[4] provided letters in support of the record both as a member of the for the petitioner.

The authors of the letters also rely on articles they claim were written about the beneficiary and awards they claim were given to the beneficiary to demonstrate the beneficiary's original contributions. For example, states: "As Lead Animator, [the beneficiary] was responsible for leading a team of animators in designing several key sequences" in further asserts that the character that [the beneficiary] developed was regarded as a great success . . . and resulted in the character . . .winning the asserts that the beneficiary was "*the* animator responsible for the artistic/design development of the award-winning mouse." However, as discussed above, four other individuals were listed as the actual recipients of the award, including two other lead animators, and the beneficiary is not the named recipient of a single other award claimed in the letters. Furthermore, none of the articles state that any of the claimed contributions are directly attributable to the beneficiary. For example, the article in states that and lead animator developed key poses for . The record does not include letters from explaining the beneficiary's role in developing . It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Both indicate in their letters that they worked on asserting that he also worked with the beneficiary on The beneficiary's imdb.com page, which the petitioner submitted, lists the beneficiary as an uncredited animator on The pages for however, which the petitioner also submitted, do not list these films.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Given the above mentioned inconsistencies, without supporting evidence which corroborates the letters' claims, there is no basis to gauge the significance of the beneficiary's contributions.

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010).[5] The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In the case of a leading role, the petitioner must demonstrate how the beneficiary's role fits within the overall hierarchy of the organization or establishment. In the case of a critical role, the beneficiary must have contributed to the success of the establishment or organization beyond merely providing necessary services.

Counsel asserts that the beneficiary played a leading or critical role for two companies, the petitioner and [redacted] Counsel also notes the beneficiary's work on the movie [redacted] which [redacted] co-produced. Regarding the movie [redacted], the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." The petitioner did not demonstrate how a movie equates to an "organization" or "establishment." Regardless, while the beneficiary lists his

[5] In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

position on that movie as "lead animator," his page, which the petitioner submitted, lists him only as an animator.[6]

The record does not contain persuasive evidence that being a member of a team of animators for movies and other projects with an unknown number of other crew members, even for an organization with a distinguished reputation such as the petitioner, is performing in a leading or critical role. For example, the beneficiary was one of 91 animators for the movie and one of 12 animators for the movie Although the beneficiary may have been "an essential leader in the animation of two key plot turning scenes" in the movie as stated by in his capacity as Chief Creative Officer for the petitioner, the letters are not persuasive that the beneficiary performed in a leading or critical role for the petitioning company as a whole. The record does not contain an organizational chart for either the petitioner or the or other evidence of their hierarchies which might demonstrate that the beneficiary served in a leading role. Companies such as the petitioner and routinely rely on individuals like the beneficiary to animate their films and other projects. While the beneficiary has played an important role in the animation department for individual projects at both the petitioning company and The the evidence does not establish that his role was leading or critical to either company's success or standing to a degree consistent with the meaning of "critical role." The evidence fails to demonstrate how the beneficiary's role as an animator and lead animator differentiated him from other individuals in the same positions as well as individuals who held more senior positions.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The director discussed the submitted evidence and found that the petitioner failed to establish that the evidence was qualifying. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *see also Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (finding that plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

B. Summary

As the petitioner did not submit qualifying evidence on behalf of the beneficiary under at least three criteria, the proper conclusion is that the petitioner has failed to demonstrate that the beneficiary satisfies the antecedent regulatory requirement of three types of evidence.

[6] By submitting materials from the petitioner has incorporated that site into the record of proceedings. The page for lists seven animators for the film, not four as states in his letter.

III. CONCLUSION

Had the petitioner submitted the requisite evidence on behalf of the beneficiary under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian,* 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.[7] Rather, the proper conclusion is that the petitioner failed to demonstrate that the beneficiary has satisfied the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

[7] The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d at 145. In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).